

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF GEORGIA  
ALBANY DIVISION**

AMOS LEE DRYER,

Plaintiff,

v.

KEVIN ROBERTS, ET. AL.,

Defendants.

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1:05-CV-161 (WLS)

**ORDER**

Before the Court is a Report and Recommendation from United States Magistrate Judge Richard L. Hodge (Doc. No. 50), filed August 15, 2007. It is recommended that Plaintiff's motion for summary judgment (Doc. No. 31) be denied without prejudice. Plaintiff has filed an objection. (Doc. No. 51).

The Magistrate Judge found that said motion argues that Plaintiff is entitled to summary judgment and that Defendants are not entitled to summary judgment. The Magistrate Judge also points out that the Defendants have filed a motion for summary judgment (Doc. No. 41) that is not ripe for determination. Further, the Magistrate Judge points out that Plaintiff's motion is not supported, at this point, with any admissible evidence. Instead of denying the motion outright based on the lack of admissible evidence, the Magistrate Judge recommends denial with prejudice and that the motion be considered in relation to Defendants' currently pending motion for summary judgment.

Plaintiff argues in his objection that there is evidence in the record to support his claim and that Plaintiff is "sending more Exhibit in support of [sic]" of Plaintiff's motion. (Doc. No. 51). Apparently some of the evidence is attached to the objection as letters to prison staff, administrative requests and other administrative documents related to Plaintiff's medical treatment. Such evidence may or not be admissible, and as the Magistrate Judge is tasked with examining the evidence such evidence at this time is better left with the

Magistrate. Further, the filing of additional or new evidence is not appropriate in an objection to a Magistrate Judge's recommendation. The Magistrate Judge has not had a chance to review said evidence. As it recommended that Plaintiff's motion be denied without prejudice and the entire record be examined in conjunction with other pending dispositive motions, it is appropriate for the Magistrate Judge to have the opportunity to do so. Accordingly, Plaintiff's objection (Doc. No. 51) is **OVERRULED**.

Upon full consideration of the record, the Court finds that said Recommendation should be, and hereby is, **ACCEPTED, ADOPTED** and made the order of this Court for reason of the findings and reasons set out therein, long with the reason of the findings and conclusion set out herein. Accordingly, Plaintiff's motion for summary judgment (Doc. No. 31) is **DENIED without prejudice**.

SO ORDERED, this 6<sup>th</sup> day of September, 2007.

/s/W. Louis Sands  
**W. Louis Sands, Judge**  
**United States District Court**